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DEKEL PATENT LTD., DAVID KLEIN  
BEIT HAROF'IM  
18 MENUHA VENAHALA STREET, ROOM 27  
REHOVOT, 76209  
ISRAEL

EXAMINER

COMSTOCK, DAVID C

ART UNIT PAPER NUMBER

3732

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/734,123

Applicant(s)

MOR, AMIT

Examiner

David Comstock

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

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**DETAILED ACTION*****Drawings***

The drawings are objected to because they contain extraneous matter, which is not permitted. The labels in Figures 1-3 should be replaced with reference characters. The reference characters and the features to which they correspond should be set forth in the specification. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Dennis et al. (5,951,605).

Dennis et al. discloses a hip joint prosthesis 10 comprising a prosthetic ligament 80 (see Fig. 1). The prosthesis comprises a femoral head 22 extending from a stem 26 and an acetabular component 60. The ligament is attached (i.e. in a sliding but radially constrained manner) to the femoral head 22 and to the acetabular cup 60 via attachment zones 32 and 70, respectively. The ligament is made from, for example, polyethylene, which is stretchable, i.e. capable of being

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stretched (see col. 2, line 65-67). It is noted that the ligament can be characterized as a replacement ligamentum teres femoris since it is a replacement, i.e. prosthetic, device and need not exactly match the natural structure which it replaces. Furthermore, it is noted that Applicant defines the ligamentum teres femoris to encompass "any shape or size, such as but not limited to, a wire, cord, string, ligament, band, ribbon, and the like" (Applicant's disclosure, page 4, lines 32-33). Furthermore, Applicant explains that the replacement ligamentum teres femoris "does not have to be attached to the same place on the femoral head and acetabular structure as the natural ligamentum teres femoris. Any attachment zone is within the scope of the invention." (Applicant's disclosure, page 5, lines 7-10). Thus, Dennis et al. discloses the claimed replacement ligamentum teres femoris as defined by Applicant.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis et al. (5,951,605).

Dennis et al. discloses the claimed invention except for the ligament extending from a location corresponding to a fovea of a natural femoral head. It

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would have been obvious to one having ordinary skill in the art at the time the invention was made to extend the ligament from a location corresponding to a natural fovea, since it has been held that mere relocation of parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dennis et al. (5,951,605) in view of Ficat et al. (3,064,645).

Dennis et al. discloses the claimed invention except for the stem having an alignment device. Ficat et al. discloses a femoral stem having an alignment device 2, i.e. the ribs, in order to ensure stability of the stem and prevent angular movement which could cause problems (see Figs 1 and 2 and col. 2, lines 65-68). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the prosthesis of Dennis et al. with an alignment device in view of Ficat et al, in order to ensure stability of the stem and prevent angular movement which could cause problems.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Comstock whose telephone number is (703) 308-8514.



D. Comstock  
12 September 2004



EDUARDO C. ROBERT  
PRIMARY EXAMINER